

July 31, 1996

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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REPORT AND DECISION ON AN APPEAL FROM
NOTICE AND ORDER.

SUBJECT: Department of Development and Environmental Services File No. E9500724

GARY WEIGEL
Code Enforcement Appeal

Location of Violation: 38104 Auburn-Enumclaw Road Southeast

Owner/Appellant: Gary Weigel
22910 Southeast 448th Street
Enumclaw, WA 98022

PRELIMINARY MATTERS:

Notice of appeal received by Examiner:	June 6, 1996
Statement of appeal received by Examiner:	June 6, 1996
Department's Report to the Examiner issued:	July 11, 1996

EXAMINER PROCEEDINGS:

Pre-hearing Conference:	Not held
Hearing Opened:	July 24, 1996
Hearing Closed:	July 24, 1996

Participants at the proceedings and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

ISSUES ADDRESSED:

1. Property use
2. "Grandfathering"
3. Salvage

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. On July 11, 1996, the King County Department of Development and Environmental Services (the "Department" or "DDES") served a "Notice of King County Code Violation; Civil Penalty Order; Abatement Order; Notice of Lien; Duty to Notify" upon Gary and Mary Weigel and David Binford and Binford's Metal and Container Service. The Notice and Order cites the following violations:

- A. Construction of a structure and lean-to (blue/gray) without the required permits and possibly within the 30-foot street setback.
- B. Remodel and usage of an old house/store which was ordered to be vacated in 1991 (due to substandard conditions of faulty electrical wiring, no smoke alarm, and failing septic system) without required permits and approvals.
- C. Use of property as a salvage yard.

A "stop work" order was posted on the house/store on January 2, 1996. "Do not occupy this property" was posted on May 25, 1995, then again June 19, 1995.

As of this hearing date (July 24, 1996), the "blue/gray structure and lean-to" has been loaded on a truck. The Appellant testifies that he is in the process of compliance. Also, as of the same date, the house/store is unoccupied and closed to entry. The Department's representative testifies that the Appellant is in "apparent compliance." Thus, this remains as the sole contested order:

Discontinue use of the property as a salvage yard.

Discontinue the processing of salvage and remove the heavy equipment, machinery, auto parts, appliances and all other heavy items by July 15, 1996.

2. On June 19, 1996, property owner Gary Weigel (hereinafter "the Appellant") filed timely appeal. With the old house/store unoccupied and the "lean-to" in the process of removal from the property, the Appellant's arguments are focused upon preserving the use of the property for salvage and recycling. The issue of whether the property may continue as a salvage/recycle site depends upon the "grandfathering" principle. That is, it depends upon whether it can be demonstrated that the present use of the property has been continuous since the property was classified ("zoned") for residential uses in 1958. The following findings apply:

- A. In 1958 the subject property was classified RA. That classification changed on February 23, 1966, to Suburban Residential (SR). Zoning again changed on July 2, 1990 to AR-10. The current zoning is RA-10, implemented in February, 1995. None of these zoning classifications permit the operation of a salvage yard or recycling business.
- B. The Appellant offers statements by previous property owners or occupants or residents which indicate some level of recycling use of the property since (at least) the 1920s. According to Aileen and Ray Cooper, the "recycling" business began when the principal structure on the property began as a general store which recycled soda pop bottles. Exhibit No. 9. This practice expanded to "scrap iron and other metals" just prior to World War II with an expansion into newspapers, pop bottles and beer bottles through 1970, according to the Cooper affidavit. Exhibit No. 9.
- C. The Appellant offers several affidavits from neighboring property owners which indicate that the history of Cooper's Corner since 1992 is "as described by Mr. Weigel"
- D. The Department observes that the affidavits submitted by the Appellant refer to newspapers, pop bottles and beer bottles since 1970, but not to the heavy salvage operation recently conducted on the property. The Department further argues that documents which indicate historical use of the property since 1992 do not support grandfathering prior to 1958. Finally, the Department argues that the observation of a single sale of metal for recycling during the late Depression does not constitute a continuous use of heavy salvage and recycling.
- E. Property records held by the Assessor's Office provide no evidence of nonconforming use of the property for recycling. Documentation of a recycling business was first noted in Department of Assessments' files in March, 1986.
- F. Exhibit No. 18, a video tape of recent activities on the property indicate its use as a heavy salvage yard. Large container trucks deliver metals for sorting, including rear end axles and differentials from trucks (which are partially cut up with torches). A large backhoe and forklift truck are used to load, unload, and move materials about the property.

- G. The Seattle-King County Department of Health reports (Exhibit No. 5) that the following unacceptable conditions exist on the property:
- There is no approved permanent septic system for this property.
 - There is no approved water source for this property
 - As a commercial business property, permanent restroom facilities (with approved water) are required for employees.
- H. According to Exhibit No. 4.A, a letter from the Washington State Department of Ecology to the Appellant, dated June 14, 1996, "Based on available information in the Department's files, it is Ecology's decision to add this property to the list as a site known to be contaminated by hazardous substances." The Appellant contests this information but offers no contradictory evidence.

CONCLUSIONS:

1. This decision must be based upon the preponderance of evidence. The preponderance of evidence on record supports the Department. That evidence includes video taped activities on the property and eye witness accounts (subject to cross-examination) presented by a neighboring property owner and by the Department itself, as well as the King County Department of Assessments' records. All of this evidence, taken together, must be given greater weight than the affidavits submitted by the Appellant.

Even if the evidence presented by the Appellant were given substantial weight, it nonetheless would not support the grandfathering claims upon which the Appellant's case rests. A soda pop bottle return program operated incidental to a general store or convenience store business cannot "grandfather" a salvage yard or (what has been called by witnesses) a transfer station business involving heavy trucks and equipment. An incidental use cannot grandfather a principal use, particularly considering the tremendous scale differential between those uses in this case.

Finally, there is no evidence of an unbroken chronological chain of use of the property as the Appellant now seeks to use it. This same conclusion applies even when giving the Appellant credit for a three-month vacancy for property clean-up between tenants.

2. For all of the reasons indicated in these conclusions, the appeal will be denied.

DECISION AND ORDER:

The appeal of Gary J. Weigel is DENIED. Use of the property for any other purpose than that permitted by the RA-10 zoning classification is prohibited. The Department's June 11, 1996, Notice and Order is in full force and effect, including civil penalty, abatement and criminal misdemeanor provisions, EXCEPT for the following changes:

1. The removal of the blue/gray structure and lean-to, which has already begun, shall be completed not later than August 15, 1996.
2. The old house/store on the property shall remain unoccupied and closed to entry until electrical and septic approval has been obtained and it has been inspected and approved for occupancy.
3. All remaining salvage or recycling materials and any heavy equipment, machinery, auto parts, appliances and all other metal objects (whether they are salvageable or recyclable or not) shall be removed from the property not later than August 30, 1996.

Nothing in this order shall be construed as limiting the legal authority of the Department of Development and Environmental Services or the King County Prosecutor.

ORDERED this 31st day of July, 1996.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 31st day of July, 1996, by certified mail, to the following parties and interested persons:

David Binford
19645 SE 259th Street
Kent, WA 98042

Gary Weigel
22910 SE 448th Street
Enumclaw, WA 98022

Jerome and Carol Eldridge
38204 Auburn-Enumclaw Road SE
Auburn, WA 98092

Elizabeth Deraitus, DDES/Code Enforcement Section
Ken Dinsmore, DDES/Bldg. Services
Gayle Ewing, King County Health Dept.
Karleen Zimmerman, Metropolitan King County Council

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless within twenty (20) days from the date of the decision an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the decision.

MINUETS OF THE JULY 14, 1996, PUBLIC HEARING ON DDES FILE NO. E9500724 - WEIGEL
CODE ENFORCEMENT APPEAL.

R. T. Titus was the Hearing Examiner in this matter. Participating at the hearing were Ken Dinsmore, representing the County, Gary Weigel, Jerry Eldridge and Carol Eldridge.

The following exhibits were offered and entered into the hearing record:

Exhibit No. 1	Staff report to Hearing Examiner
Exhibit No. 2	Copy of the June 19, 1996, Notice of Appeal by Gary J. Weigel
Exhibit No. 3	Copy of June 11, 1996, Supplemental Notice and Order issued to Gary and Mary Weigel, David Binford and Binford Metals
Exhibit No. 4	Copy of June 12, 1996, letters from the Department of Ecology to David Binford and Mr. and Mrs. Weigel.
Exhibit No. 5	Copy of June 5, 1996, letter from the Seattle-King County Health Department to Gary Weigel
Exhibit No. 6	Copy of May 23, 1996, letter from the Department of Ecology to Ms. Pam Dhanapal of DDES
Exhibit No. 7	Copy of February 21, 1996, Notice and Order to Gary Weigel, et al.
Exhibit No. 8	Copy of May 2, 1996, letter to Gary Weigel from Kenneth Dinsmore
Exhibit No. 9	Copy of three statements on the subject property's commercial history signed by Ray and Arleen Cooper, Jack and Marlene Jones and Don Rutledge
Exhibit No. 10	Copy of statements regarding the historical use of the property
Exhibit No. 11	Copy of property records from the Department of Assessments
Exhibit No. 12	Copy of the May 25, 1995, Violation Notice and the Notice "Not to Occupy", both signed by Elizabeth Deraitus
Exhibit No. 13	Vicinity map
Exhibit No. 14	The Commercial History of Coopers Corner by Gary Weigel dated and notarized April 23, 1996
Exhibit No. 15	Documentation of property from Assessor's office
Exhibit No. 16	Photographs taken by Elizabeth Deraitus February 1996 (two pages)
Exhibit No. 17	Photographs taken by Elizabeth Deraitus April 1996
Exhibit No. 18	Video of subject property taken and submitted by Jerry Eldridge

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